

# FACILITY USE AGREEMENT



This NEBO SCHOOL DISTRICT FACILITY USE AGREEMENT (hereinafter "Agreement") is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between NEBO SCHOOL DISTRICT, a body corporate and politic of the State of Utah, with its principal place of business located at 350 South Main, Spanish Fork, Utah, 84660 (hereinafter the "School District"), and the SPONSORING ORGANIZATION / INDIVIDUAL (hereinafter "Lessee") listed in the attached Application for Use of School Facilities (hereinafter "Application").

NOW, THEREFORE, in consideration of the rents, covenants, and agreements herein contained, the School District hereby leases to Lessee the "Facilities" described herein as the rental and upon the terms and conditions stated herein.

1. **Facilities.** As used herein, the term "Facilities" shall refer to and mean the school facilities described in the attached Application.

2. **Term of Agreement.** The School District hereby leases the Facilities to Lessee for the date(s) and hour(s) indicated in the attached Application.

3. **Termination.** If the Facilities are required for School District programs, activities, or events; or in the event of an emergency or unforeseen circumstance; or for whatever reason it is determined, in the sole discretion of the School District, to be in the best interests of the School District, Lessee hereby acknowledges, understands, and agrees that the School District has the right to rescind this Agreement on short notice without recourse against the School District.

4. **Rental Payments.** Lessee shall pay to the School District as rent for the Facilities the rental fee amount set forth in the attached Application, which is due and payable in advance and in full upon the execution of this Agreement.

5. **Security/Cleaning Deposit.** Upon execution of this Agreement, Lessee has deposited with the school a check in the amount listed in the attached Application as a security/cleaning deposit. Said security/cleaning deposit shall be held by the School District, without liability for interest or segregation in a special account, for security for the faithful performance by Lessee of the terms, covenants, and conditions of this Agreement. The School District may apply the security/cleaning deposit to any of the following obligations of Lessee: (a) rent or any other financial obligations owed under the terms of this Agreement; (b) property damage or loss to the Facilities caused by Lessee or that of Lessee's employees, agents, participants, visitors, or invitees; and (c) clean-up of the Facilities, unless adequately cleaned by Lessee. After Lessee's use of the Facilities has concluded, the school shall determine whether there are any obligations owed by Lessee. In the event there are no such obligations, the check shall be returned to Lessee. In the event there are obligations owed by Lessee, the check shall be deposited to cover the costs of such obligations. The balance of the security/cleaning deposit, if any, and a written itemization of any deductions from the security/cleaning deposit, shall be delivered or mailed to Lessee.

6. **Use of Facilities.**

A. Lessee shall be entitled to use the Facilities solely and exclusively for the authorized event set forth in the attached Application. All other uses are prohibited.

B. Lessee shall assure that all activities are compatible with the type of use typically associated with the Facilities being used.

C. Lessee shall comply with any and all present and future laws, ordinances, and regulations of duly constituted public authorities (federal, state, county, municipal, or otherwise) now or hereafter in any manner affecting the Facilities during the term of this Agreement, including, but not limited to, the Americans with Disabilities Act (ADA), as amended. Lessee shall also comply with all terms and conditions set forth in Nebo School District Policy KA, *School Facility Use*. In addition, Lessee shall comply with any and all policies, procedures, and rules of the School District regarding the use of the School District's properties and facilities and the conduct of persons in or on the School District's properties and facilities, whether now or hereafter adopted. The School District policies and Utah State law include, but are not limited to, prohibitions against smoking, drinking of alcoholic beverages, and illegal drug use on or about school facilities.

D. Lessee shall not commit or suffer to be committed any waste, vandalism, or damage to the Facilities, and shall maintain the Facilities in a clean and orderly condition, free of rubbish, debris, and unlawful obstructions.

E. Lessee shall not commit or suffer to be committed any public or private nuisance or any other act or thing which may disturb the quiet enjoyment of occupants of nearby premises.

F. All participants and persons invited on the Facilities by Lessee must comply with the provisions of this Agreement, and Lessee shall be responsible when said persons fail to comply.

G. Lessee hereby accepts the Facilities in its existing condition. No representation, guaranty, statement, or warranty, express or implied, has been made by or on behalf of the School District as to the condition or as to compatibility of the Facilities in relation to Lessee's proposed activities. In no event shall the School District be liable for any defect in such Facilities or for any limitation on its use.

H. Lessee shall not make any alterations, additions, or improvements on the Facilities. Lessee shall not remove or displace furniture or equipment located in the Facilities.

7. **Personal Injury and Property Damage**. Lessee shall be responsible, financially and otherwise, for any and all personal injuries, property damage, property loss, and destruction of the Facilities, or any part thereof, arising out of Lessee's activities and use of the Facilities.

8. **Insurance**.

A. Lessee acknowledges, understands, and accepts that only groups and activities sponsored by the School District (identified as Class I under Nebo School District Policy KA) are covered by the District's insurance. Lessee further acknowledges, understands, and accepts that use of the Facilities under Classes II through VII constitutes civic center use under Utah law and are hereby granted a "permit" pursuant to UTAH CODE ANN. §§ 53G-7-209 and 210.

B. Lessee acknowledges, understands, and accepts that if it is leasing the Facilities under Class II, III, IV, V, VI, or VII (as identified in Nebo School District Policy KA), which constitutes civic center use and is considered a "permit" under Utah law, then: (a) Lessee uses the Facilities at its own risk; and (b) the School District is immune from liability under the *Governmental Immunity Act of Utah* except as provided in UTAH CODE ANN. § 63G-7-301. Lessee further acknowledges, understands, and accepts that while the School District is granted immunity under the *Governmental Immunity Act of Utah*, Lessee is not so covered and is therefore strongly encouraged to secure insurance to protect itself against liability for personal injury and property damage to the Facilities. If Lessee operates under Class II, III, IV, V, VI, or VII it may be personally liable for such damages.

C. Lessee warrants that if it operates under Class VIII or is otherwise directed by School District, that it must maintain all legally required insurance. Lessee, at its own cost and expense, shall at all times during the term of this Agreement secure and maintain in full force such policies of commercial liability insurance, including coverage for personal injury, property damage, and property loss, underwritten by one or more duly licensed insurers in the State of Utah. Each insurance policy shall be written on an occurrence basis, which

shall insure Lessee and the School District against liability for injury to persons and property, and death of any person or persons, occurring in, on, or about the Facilities, or in any way arising out of, directly or indirectly, the Lessee's activities and use thereof. All general liability and property damage insurance policies shall contain a provision that the School District (named as an additional insured) shall be entitled to recover under the said insurance policies for any loss occasioned to it or to its employees and agents by reason of the negligence or wrongdoing of Lessee or its employees and agents. Furthermore, the insurance policies shall provide that the coverage is primary over any other insurance coverage available to the School District or to its employees and agents. All policies of insurance must contain a provision that the company underwriting the policy shall give to the School District thirty (30) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance, and the right of the School District to reinstate said policy. The insurance described herein shall afford protection to the School District of not less than one million dollars (\$1,000,000) per occurrence and not less than three million dollars (\$3,000,000) in the aggregate. **Upon the execution of this Agreement, Lessee shall deliver to the School District an original Certificate of Insurance together with any applicable endorsements from the insurer naming the School District (including its board members, employees, agents, and representatives) as an additional insured (primary coverage and not contributing) and providing such protection and coverage to the School District in accordance with the terms and conditions set forth in this section. The Certificate of Insurance shall clearly indicate the specific insurance coverages and amounts.** Notwithstanding anything to the contrary in this Agreement, Lessee's obligation to carry the insurance provided for herein may be bought within the coverage of a so-called blanket or umbrella policy or policies of insurance maintained by Lessee, provided, however, that the coverage afforded to the School District will not be reduced by reason of the use of such blanket or umbrella policy of insurance.

**9. Supervision; Medical and Emergency Care; Indemnification.** Lessee warrants to the School District that it will provide all supervision necessary for the safe use of the Facilities. Lessee understands and agrees to take full responsibility to provide medical and emergency care to all participants and spectators involved in the event. Lessee warrants to the School District that all medical and emergency care will be appropriate and sufficient. Lessee shall indemnify, protect, and save and hold harmless the School District, its board members, officials, officers, employees, agents, and volunteers from and against all losses, damages, injuries, claims, demands, and expenses, including attorneys' fees and court costs of whatsoever nature, arising out of: (a) the use, condition (including, but not limited to, latent and other defects, whether or not discoverable by the School District), or operation of the Facilities by Lessee during the term of this Agreement; and (b) the failure of Lessee to perform or comply with any of the provisions of this Agreement. The indemnities, assumptions of liabilities, and obligations herein provided for shall continue in full force and effect notwithstanding termination of this Agreement, whether by expiration of time, by operation of law, or otherwise. Lessee is an independent contractor, and nothing contained in this Agreement shall authorize Lessee or any other person to use or operate the Facilities so as to incur or impose any liability or obligation for or on behalf of the School District.

**10. Environmental Compliance and Indemnification.** During the term of this Agreement, Lessee shall comply with any and all applicable federal, state, and local laws, rules, regulations, and orders with respect to the handling, storage, transportation, treatment, or disposal of hazardous or toxic substances. Lessee hereby agrees unconditionally, absolutely, and irrevocably, to indemnify, defend, and hold harmless the School District, its employees and agents, against and in respect of any loss, liability, injury, damage, or expense (including court costs and attorneys' fees) of whatsoever nature arising directly or indirectly out of the foregoing environmental matters.

**11. Default and Remedies.** Failure of Lessee to observe or perform any of Lessee's covenants, agreements, or obligations hereunder shall constitute a default and a breach of this Agreement. In the event of any default hereunder, the School District shall have all the rights and remedies available in law and in equity in the State of Utah. The rights and remedies of the School District shall not be mutually exclusive, but shall be cumulative in all effects.

## 12. General Provisions.

**A. Waiver or Forbearance.** No delay or omission in the exercise of any right or remedy of the School District on any default of Lessee shall impair such right or remedy or be construed as a waiver. Any waiver of the School District of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No waiver by the School District of any breach by Lessee of any obligations, agreements, or covenants hereunder shall be a waiver of any subsequent breach of any other obligation, agreement, or covenant. Nor shall any forbearance by the School District to seek any remedy for any breach by Lessee be a waiver by the School District of its rights and remedies with respect to such or any subsequent breach.

**B. Authority.** The undersigned individual who signs this Agreement on behalf of the Lessee personally represents that he or she is duly authorized to execute and deliver the same on behalf of the Lessee for which his or her signing is made, whether a corporation, limited liability company, general or limited partnership, trust, or otherwise, and this Agreement is binding upon said Lessee and upon the individual signor in accordance with its terms.

**C. Joint and Several Liability.** The undersigned individual who signs this Agreement on behalf of the Lessee shall be jointly and severally liable with the Lessee for all obligations contained in this Agreement.

**D. Costs and Expenses of Enforcement.** In the event of the failure of either party hereto to comply with any provisions of this Agreement, the defaulting party shall pay any and all costs and expenses, including reasonable attorneys' fees, arising out of or resulting from such default, or in pursuing any remedy hereunder, or by the laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, including any appeals.

**E. Severability.** In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**F. Entire Agreement.** This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the parties to this Agreement.

**G. Amendments.** This Agreement may be modified only by a writing signed by the parties in interest at the time of the modification.

**H. No Assignment or Subletting.** Lessee may not or assign or sublet the Facilities. Any attempted assignment or sublease shall be void and constitute a default of this Agreement by Lessee.

**I. Covenants and Conditions.** Each provision of this Agreement performable by Lessee shall be deemed to be both a covenant and a condition.

**J. Binding Effect.** Subject to any provisions hereof restricting assignment or subletting by Lessee, this Agreement shall bind the parties, their personal representatives, successors, and assigns, and shall be governed by the laws of the State of Utah.

**K. Captions.** The captions to the various Sections and Paragraphs of this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

**L. Notices.** All notices, statements, demands, requests, consents, or approvals hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party. Among other methods of services, any notice relating to this Agreement or rights or remedies hereunder may be served upon Lessee by the School District by mailing such notice by registered or certified United States mail, postage prepaid, addressed to Lessee, or upon the School District by mailing such notice in like manner, addressed to the School District or at such other place as the parties may from time to time designate. Notice given by mail shall be deemed delivered three (3) days following date of deposit for mailing.

**M. Time.** Time is of the essence of each term, provision, and covenant of this Agreement.

**N. Application.** The Application for Use of School Facilities attached hereto is fully incorporated into this Agreement by this reference and made a part hereof. Said Application shall be binding upon the parties hereto.

**O. Rules.** The Rules attached hereto are fully incorporated into this Agreement by this reference and made a part hereof. The Rules are binding upon Lessee.

**P. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**Q. Gender and Number.** The singular number include the plural whenever the context so indicates. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, limited liability company, or other legal entity when the context so requires. The word "person" means person or persons or other entity or entities or any combination of persons and entities.

**R. Governing Law, Jurisdiction, and Venue.** The laws of the State of Utah will govern the validity, performance, and the enforcement of this Agreement. Jurisdiction and venue for the enforcement of this Agreement shall be found in the courts of Utah County, State of Utah.

DATED effective the day and year above written.

**"SCHOOL DISTRICT"**

**"LESSEE"**

**NEBO SCHOOL DISTRICT**  
**A body corporate and politic of the State of Utah**

\_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BOARD OF EDUCATION  
SCHOOL FACILITY USE  
Rules**



**1. Facility Use Agreement**

A Facility Use Agreement, prepared by and containing such terms and conditions as deemed reasonable and appropriate by the School District, shall be signed between the sponsoring group or individual and the school administrator. A Facility Use Agreement is required for all uses under Classes III, IV, V, VI, VII, and VIII in accordance with the following:

- 1.1. Only facilities specifically identified on the Fee Schedule may be rented.
- 1.2. Fees will be charged in accordance with the Fee Schedule and Policy KA, *School Facility Use*.
- 1.3. Additional fees will be charged for use of special equipment, additional services, and additional personnel. These fees will be determined by the school administrator, listed on the Application, and incorporated into the Facility Use Agreement.
- 1.4. Applications for use must be submitted at least two (2) weeks in advance of the activity. The Facility Use Agreement, Certificate of Insurance (where required, including applicable endorsements naming Nebo School District as an additional insured), and full payment of rental and use fees must be received before the event is placed on the calendar.
- 1.5. Depending upon the type of activity, the facility to be used, the number of people involved, and other relevant factors, the school administrator has the discretion and right to require a security/cleaning deposit to cover any unexpected costs in the event of property damage, property loss, and/or clean-up. The amount of the security/cleaning deposit shall be determined by the school administrator and received by a check made payable to the school. The check will not be deposited but shall be held in safekeeping by the school administrator until after the activity is completed. The school administrator shall then assess if there is any property damage, property loss, or clean-up associated with the activity. If there is no property damage, property loss, or clean-up, the check shall be returned to the sponsoring group or individual. If there is any property damage, property loss, or clean-up, the school administrator shall ascertain the costs of such and may deposit the check to cover such costs. A written itemized accounting of the property damage, property loss, and/or clean-up costs shall be provided by the school administrator to the sponsoring group or individual along with a check for the excess amount or a bill for payment for the deficient amount. The foregoing matters concerning a security/cleaning deposit shall be accomplished by the school administrator in a timely manner.

**2. Sponsoring Group / Individual Responsibilities**

- 2.1. Facility usage may not interfere with any school activity, event, function, or purpose, and a request may be denied if it is determined that the requested use might cause such interference.
- 2.2. All activities must be compatible with the school facility being used. Activities that are not compatible with the type of use typically associated with the school facility are not permitted.
- 2.3. If the kitchen is to be used for food service or preparation, a District food service worker, possessing a current and valid health department food handler's license or permit, must be present and the cost paid by the sponsoring group or individual at the employee's hourly wage.
- 2.4. It shall be the responsibility of the sponsoring group or individual to assure that only authorized portions of the school facilities are used and the premises are vacated as scheduled. All functions shall promptly close by 10:30 p.m., unless special permission is secured in advance from the school administrator.
- 2.5. The District assumes no liability for personal injury or property loss or damage. Sponsoring groups or individuals are solely responsible for any and all claims, damages, liabilities, costs, and

expenses (including attorney's fees) arising out of or in any way associated with the activity. In addition, the sponsoring group or individual shall defend, hold harmless, and fully indemnify the School District of any and all such claims, damages, liabilities, costs, and expenses.

- 2.6. Sponsoring groups or individuals shall provide sufficient, competent adult supervision (at least 21 years of age).
- 2.7. Sponsoring groups or individuals shall not discriminate against individuals because of race, color, gender, age, religion, nation origin, disability, or any other legally protected classification.
- 2.8. The facility shall be left clean and in the same condition as the sponsoring group or individual found it.
- 2.9. The sponsoring group or individual shall pay all damages to the building, equipment, or grounds which occurred during the activity.
- 2.10. The sponsoring group or individual will insure that the school facilities remain a drug-free, smoke-free, and alcohol-free place.
- 2.11. Profane language, quarreling, fighting, and gambling are prohibited activities on school property.
- 2.12. It is the responsibility of the sponsoring group or individual to ensure that the sale of food and/or drink has been approved.
- 2.13. No food and/or drink will be allowed in the auditorium or in other designated portions of the school. Permission for the consumption of any food and/or drink in the school must be specifically authorized by the school principal.
- 2.14. All activities shall comply with any and all applicable federal, state, and local laws, rules, and regulations.
- 2.15. The sponsoring group or individual is responsible to comply with any and all requirements of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504), as amended, including, but not limited to, providing requested accommodations for programs or activities (i.e., interpreters, facility access, materials in alternative formats, ADA notifications in publicity materials, service animals, etc.).

### **3. No Alteration of Premises**

Sponsoring groups or individuals using school facilities, including a stage or stage equipment, shall not be permitted to remove or displace furniture, equipment, or apparatus, including lights, curtains, and ceiling valance; or change the counter weights system or the switch board, except when under the direct supervision of a designated school employee. Where the stage is to be used, full details of equipment and personnel requested must be furnished in advance with the application.

### **4. General Restrictions**

- 4.1. Emergency or unforeseen circumstances that require the use of school facilities will take precedence over any prior scheduling by the sponsoring group or individual.
- 4.2. School facilities shall not be available for dances except those sponsored by the school or Nebo School District Community Education and approved by the school administrator.
- 4.3. School marquees are not available for rent, nor will the school participate in advertising any commercial programs held within the school, except as may be permitted under Nebo School District Policy KACA, *School Advertising Restrictions*.
- 4.4. School facilities will not be available on Sundays, except: (a) as provided only in an Interlocal Agreement with the city, county, state, or other governmental entity; or (b) as provided only in the event of a community emergency as approved by the Superintendent.

- 4.5. Drapes, hangings, curtains, drops, and all decorative materials used within or upon school buildings shall be made of non-flammable material, and all materials used must be approved by the State Fire Marshall. No open fires, flames, or lighted candles shall be permitted.
- 4.6. Classrooms shall not be disturbed or rearranged to accommodate the activity (i.e., chairs, desks, furniture, equipment, wall hangings, etc.).
- 4.7. All drawers, cupboards, closets, and other such areas in the school are off-limits and shall not be opened.
- 4.8. Some school facilities, including, but not limited to, offices, photography labs, computer labs, home economic rooms, special ed classrooms, science labs, weight rooms, and shops are not available for rent. In addition, school administrators may determine that a particular facility is not available for rent in order to prevent disclosure of private or confidential student information, to protect valuable or fragile equipment and supplies, or for the reasons described below.
- 4.9. Either a school administrator or the Operations Department may prohibit the use of any school or District facility in the event the facility needs maintenance, repair, or restoration; the physical condition of the facility is unsafe for the intended activity(ies); or for any other reason relating to the condition of the facility deemed to be in the best interest of the School District as determined in its sole and absolute discretion. The prohibition on use of a facility under this paragraph may occur regardless of whether a Facility Use Agreement has been signed or an event or activity has been scheduled or is underway.
- 4.10. District facilities may not be used for conduct that is illegal, false, inaccurate, threatening, harmful, hateful, abusive, harassing, stalking, tortious, defamatory, libelous, vulgar, obscene, indecent, lewd, profane, or invasive of a person's privacy. Facilities may not be used for activities that violate any state or federal laws, rules, regulations, or District policies or procedures. Facilities may not be used to promote illegal discrimination on the basis of gender, race, color, religion, age, national origin, disability, or any other legally protected classification.

## **5. Stadiums and Other Turf Fields**

- 5.1. Except for water, foods and beverages are not permitted on the turf or track. This includes gum, candy, sunflower seeds, and sports drinks.
- 5.2. Wheels are not permitted on the turf or track. This includes bikes, scooters, roller blades, ATVs, and other vehicles.
- 5.3. Tables and chairs with post legs are not permitted on the turf or track.
- 5.4. Except as required by the ADA, animals are not permitted on the turf or track.
- 5.5. Sharp objects are not permitted on the turf or track. This includes glass containers and high-heeled shoes.
- 5.6. Heaters, open flames, and other heat-producing objects are not permitted on the turf or track.

**Note: Any violation of these Rules or other school or District policy shall be sufficient for denying further use of school property and facilities to any individual or organization.**